IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO.1655 OF 2006

Smt. Amar Kaur Suri wd/o Trilok Singh
Hukum Singh Suri and Anr. ...Petitioners

Versus

Shapurbaug Consumers Coop. Society
Ltd. and ors. ...Respondents

Mr.M.P.Vashi for petitioners
Mr.P.S.Dani i/b K.P.Gala for respondent no.1

CORAM : P.V.KAKADE, J.
DATE : 19TH APRIL, 2006

P.C.:

1. Heard the learned counsel for both the parties. Perused the record.

2. The petitioner-sub-tenant has preferred this petition against the judgment and order passed by the lower appellate court dated 28.10.2005 dismissing his

appeal and confirming the judgment and order passed by the trial court dated 18.10.2003 decreeing the suit for eviction of the petitioners from the suit premises.

3. The respondent-plaintiff is a Consumer Cooperative Society Ltd., having its office at Shop No.3-4 situated at Shapur Baug, 372, Vithalbhai Patel Road, Bombay 400 004. The plaintiffs are the monthly tenant in respect of the said shop premises and defendant no.1 is the sub-tenant of the plaintiffs in respect of the rear portion of the shop no.4 admeasuring 10 x 10 ft. on a monthly rent of Rs.115/= per month. The plaintiffs claim that they required the suit premises reasonably and bonafide for their use and occupation in order to expand the activities of the society. It was further alleged that the defendant no.1 was not in occupation of the suit premises and had unlawfully sublet the same and it was given on leave and licence to defendant no.2 who was not occupant. On this ground the suit came to be filed for eviction of the defendants.

. The defendants contested the suit, inter alia, denying the allegations submitting that the requirement alleged by the plaintiffs was not bonafide. The

allegations regarding alleged unlawful subletting to defendant no.2 was also challenged and it was submitted that the defendant no.1 was in occupation of the premises and on such and other ground the suit was sought to be dismissed.

4. The learned trial judge after hearing both the parties and on the basis of available evidence came to the conclusion that the plaintiffs had proved that the defendant no.1 had unlawfully inducted the defendant no.2 in the suit premises. The issue of bonafide requirement was, however, held not proved by the trial court.

. The appeal was carried to the lower appellate court, who after hearing both the parties concurred with the findings recorded by the trial court on the issue of illegal subletting and also came to the conclusion that the evidence on record sufficient to hold that the plaintiff had proved his bonafide requirement of the suit premises for expansion of his office and passed decree on that count also and dismissed the appeal.

5. At the outset, it may be noted that the learned counsel for the petitioners brought to my notice that the

evidence on record was sufficient to show that the defendant no.2 came to be inducted in the suit premises prior to the 1.2.1973 and therefore, he was protected as sub-tenant and was in lawful possession. In support of his submission the learned counsel sought to put reliance on Apex Court ruling in the case of Anandram Chandanmal Mount and Anr. Vs. Bansilal Chunilal Kabra reported in AIR 2000 SC 288. On perusal of the said judgment I must note that there cannot be two opinions regarding the ratio laid down by the apex court in the said ruling to the effect that the sub-tenant inducted before 1973 becomes direct tenant from the date of determination of the tenancy of main tenant. However, the said ruling cannot be said to be applicable to the present case because it is an admitted as well as evidential position that the defendant no.1 itself is a sub-tenant of the plaintiff and therefore, the defendant no.2 cannot be said to be protected by virtue of the amended law in the year 1973.

6. Both the courts below have concurrently recorded that the defendant no.2 is unlawful occupation of the suit premises on the basis of available evidence. The courts below have relied upon the admission of defendant

no.1 Kohli in order to hold that it was an admitted position that the defendant no.1 was not in suit premises since the year 1972 and defendant no.1 has been carrying on business elsewhere in some other name. This obviously notes the conclusion that the defendant no.2 is an unlawful occupation of the suit premises and as such the concurrent findings recorded by both the courts below are seen to be legal and proper and therefore, it would brook no interference.

7. So far as the issue regarding reasonable and bonafide requirement of the suit premises is concerned, the learned counsel for the petitioner submitted that the approach of the lower court was wrong to the sense that the onus was upon the defendant to show the malafide requirement of the plaintiff. However, even if we keep this observation away, still the evidence on record is seen to be quite ample in order to hold that the plaintiff has proved his bonafide and reasonable requirement of the suit premises for expansion of his office activities. The evidence of the plaintiff clearly shows that the premises available to them at present is only 300 to 400 sq. ft. from where they are running shop and they required the suit premises for storing the

goods as well as conducting meetings etc. and for the office purpose. Under these circumstances, it cannot be said that the plaintiffs have not established his reasonable and bonafide requirement.

8. Be as it may, the fact remains that the lower appellate court has found that the suit is deserve to be decreed on both the counts as noted above and reasoning adopted and findings recorded by both the courts below appear to be just, legal and proper on the point of subletting and as such I hold that the petition is devoid of any merits.

9. In the result the petition stands dismissed with no order as to costs.

10. At this stage the learned counsel for the petitioners sought some time to vacate the suit premises. In view of the facts and circumstances, the petitioners are given time of three calender months from today to vacate the suit premises on condition that the petitioners as well as all adult members of their family shall furnish an Undertaking to that effect that they shall not crate any third party interest in the suit

property during their occupancy and they shall continue to pay the compensation to the respondents as agreed. The undertaking to be furnished within two weeks from the date of this order.

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